

PART 4000—BOARD OF DIRECTORS OF THE HOPE FOR HOMEOWNERS PROGRAM

Subpart A—Rules Regarding Access to In- formation Under the Freedom of Infor- mation Act

Sec.

4000.1 Purpose and scope.

4000.2 Freedom of Information Act.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1715z-22.

SOURCE: 74 FR 7813, Feb. 20, 2009, unless otherwise noted.

Subpart A—Rules Regarding Ac- cess to Information Under the Freedom of Information Act

§ 4000.1 Purpose and scope.

This subpart establishes the Board's procedures governing access to records of the Board under the Freedom of Information Act (5 U.S.C. 552).

§ 4000.2 Freedom of Information Act.

(a) *In general.* While the Board is not part of the Department of Housing and Urban Development ("HUD"), the Board follows the regulations promulgated by HUD at subparts A and B ("FOIA Disclosure Information") of part 15 ("Public access to HUD records under the Freedom of Information Act and testimony and production of information by HUD employees") of Title 24 ("Housing and Urban Development") of the Code of Federal Regulations ("CFR"), except as otherwise provided in this section. Any reference in 24 CFR 15.1 through 15.112 to "HUD" shall be construed to refer to the Board. In the event that the regulations at subparts A and B of part 15 of title 24 of the CFR subsequently are amended by HUD, the Board will follow those amended regulations. The following additional information is provided to implement 24 CFR 15.1 through 15.112 as such sections apply to the Board.

(b) *Requests for information.* All requests to the Board for access to records of the Board should be directed to the attention of the Board at the U.S. Department of Housing and Urban Development (HUD), Freedom of Information Act Office, 451 Seventh Street, SW., Room 10139, Washington, DC

20410–3000 (HUD Headquarters), where the Board maintains its principal place of business. Requestors should follow the directions for requesting records as provided in the regulations in 24 CFR part 15, subpart B. The public reading rooms for the Board are the reading rooms located at HUD Headquarters in Washington, DC. Due to security measures at HUD Headquarters, an advance appointment to review the public comments must be scheduled by calling the FOIA Office at 202-708-3054 (this is not a toll-free number).

(c) *Requests for records.* Initial determinations whether to grant requests for records of the Board will be made by the Secretary of the Board or the designee of such official. Requests for records by mail should be addressed to the same address as that provided in paragraph (a) of this section.

(d) *Administrative appeal of initial determination to deny records.* (1) Appellate determinations with respect to the records of the Board will be made by an official, designated by the Executive Director of the Board, who had no involvement in the initial determination of the request for records that is the subject of the appeal.

(2) Appellate determinations with respect to requests for expedited processing shall be made by the Secretary of the Board or the designee of such official.

(3) Appeals should be addressed to the address provided in paragraph (a) of this section.

(e) *Delivery of process.* Service of process will be received by Counselor to the Board or the designee of such official and shall be delivered to the address provided in paragraph (a) of this section to the attention of Counselor to the Board.

PART 4001—HOPE FOR HOMEOWNERS PROGRAM

Subpart A—HOPE for Homeowners Program—General Requirements

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AUTHORITY: 12 U.S.C. 1701z-22.

SOURCE: 73 FR 58420, Oct. 6, 2008, unless otherwise noted.

Subpart A—HOPE for Homeowners Program—General Requirements

§ 4001.01 Purpose of program.

The HOPE for Homeowners Program is a temporary program authorized by section 257 of the National Housing Act, established within the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD) that offers homeowners and existing loan holders (or servicers acting on their behalf) FHA insurance on refinanced loans for dis-

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tressed borrowers to support long-term sustainable homeownership by, among other things, allowing homeowners to avoid foreclosure. The HOPE for Homeowners Program is administered by HUD through FHA.

§ 4001.03 Requirements and delegated authority.

(a) *Core requirements.* This subpart establishes the core requirements for the HOPE for Homeowners Program that have been adopted by the Board of Directors (Board) for the HOPE for Homeowners Program (Program). In addition to the core requirements, codified in this subpart, the Board of Directors may adopt and issue additional requirements, standards and policies through non-codified regulations, including through order, FEDERAL REGISTER notice, or other statement, such as a mortgagee letter, to be issued and implemented by FHA.

(b) *Basic Program parameters.* (1) FHA is authorized to insure eligible refinanced mortgages under the Program commencing no earlier than October 1, 2008. The authority to insure additional mortgages under the Program expires September 30, 2011.

(2) Under this Program, an eligible mortgagor may obtain a refinancing of his or her existing mortgage(s) with a new mortgage loan insured by FHA, subject to conditions and restrictions specified in section 257 of the National Housing Act and requirements established by the Board.

(c) *Delegated authority.* HUD is statutorily charged with administering, through FHA, the Program. In carrying out the Program requirements established by the Board, FHA is directed to issue such interim guidance and mortgagee letters as FHA determines necessary or appropriate, within the parameters of the requirements, standards and policies adopted by the Board. In addition to FHA's statutory charge, the Board of Directors authorizes FHA to address unique or case-by-case situations as may be encountered by FHA in carrying out the Program, and to take such action as may be necessary to implement the Board's requirements. This delegated implementing authority

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includes, but is not limited to, specifying application forms, mortgage application procedures, certifications or other assurances, and other information collection requirements, subject to such rules, standards and policies as the Board may adopt.

(d) *Other applicable requirements.* Except as may be otherwise provided by the Board, the provisions and requirements in the FHA regulations in 24 CFR part 203, which are generally applicable to all FHA-insured single family mortgage insurance programs, also apply with respect to the insurance of a refinanced eligible mortgage under the Program.

§ 4001.05 Approval of mortgagees.

(a) *Eligibility.* In order for a mortgage to be eligible for insurance under this part, the mortgagee originating the mortgage loan and seeking mortgage insurance under this part shall have been approved by the Secretary pursuant to 24 CFR part 202.

(b) *Mortgagee whose loan is to be refinanced.* A mortgagee holding or servicing an eligible mortgage to be refinanced and insured under section 257 of the National Housing Act is not required to be an approved mortgagee as required in paragraph (a) of this section, unless it seeks to be the originator of the refinanced mortgage to be insured by FHA.

§ 4001.07 Definitions.

As used in this part and in the Program, the following definitions apply.

Act means the National Housing Act (12 U.S.C. 1701 *et seq.*).

Allowable closing costs mean charges, fees and discounts that the mortgagee may collect from the mortgagor as provided in 24 CFR 203.27(a).

Board means the Board of Directors of the HOPE for Homeowners Program, which is comprised of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation or the designees of each such individual.

Capital improvements means a repair, renovation, or addition to a property

that significantly enhances the value of the property, but does not include expenses for interior decor, landscape maintenance, or normal maintenance or replacement expenses.

Contract of insurance means the agreement by which FHA provides mortgage insurance to a mortgagee.

Default and delinquency fees means late charges contained in a mortgage/ security instrument for the late or non-receipt of payments from mortgagors after the date upon which payment is due, including charges imposed by the mortgagee for the return of payments on the mortgage due to non-sufficient funds.

Direct financial benefit, as used in section 257(e)(1)(A)(ii)(II) of the Act, consists of the greater of two factors:

(1) The amount of initial equity the mortgagor has in the property at the closing for the Program mortgage as determined under § 4001.118; and

(2) The total amount that the existing senior mortgage and all existing subordinate mortgages on the property have been written down.

Disposition means any transaction that results in whole or partial transfer of title of a property other than—

(1) A sale of the property; or

(2) Any transaction or transfer specified in 12 U.S.C. § 1701j-3(d)(1) through (8).

Eligible Mortgage means a mortgage as defined in § 4001.104.

Existing senior mortgage means an eligible mortgage that has superior priority and is being refinanced by a mortgage insured under section 257 of the Act.

Existing subordinate mortgage means a mortgage that is subordinate in priority to an eligible mortgage which is being refinanced by a mortgage insured under section 257 of the Act.

FHA means the Federal Housing Administration.

HOPE for Homeowners Program (or Program) means the program established under section 257 of the Act.

HUD means the Department of Housing and Urban Development.

Intentionally defaulted for purposes of section 257(e)(1)(A) of the Act means the mortgagor:

(1) Knowingly failed to make payment on the mortgage or debt;

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(2) Had available funds at the time payment on the mortgage or debt was due that could pay the mortgage or debt without undue hardship; and

(3) The debt was not subject to a bona fide dispute.

Mortgage has the same meaning as provided in 24 CFR 203.17(a)(1).

Mortgagee has the same meaning as provided in 24 CFR 203.251(f).

Mortgagor has the same meaning as provided in 24 CFR 203.251(e).

Premium pricing means the price for the sale of a mortgage loan with an above market rate of interest.

Prepayment penalties mean such amounts as defined in 12 CFR 226.32(d)(6) of the Federal Reserve Board's Regulation Z (Truth in Lending).

Primary residence means the dwelling where the mortgagor maintains his or her permanent place of abode and typically spends the majority of the calendar year. A mortgagor can only have one primary residence.

Program mortgage means the mortgage into which the existing senior mortgage is refinanced.

Related party of a person means any of the following or another person acting on behalf of the person or any of the following—

(1) The person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse;

(2) Any entity of which 25 percent or more of any class of voting securities is owned, controlled or held in the aggregate by the person or the persons referred to in paragraph (1); and

(3) Any entity of which the person or any person referred to in paragraph (1) serves as a trustee, general partner, limited partner, managing member, or director.

Secretary means the Secretary of Housing and Urban Development.

Total monthly mortgage payment means the sum of:

(1) Principal and interest, as determined on a fully indexed and fully amortized basis; and

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(2) *Escrowed amounts.* (i) The monthly required amount collected by or on behalf of the mortgagee for real estate taxes, premiums for required hazard and mortgage insurance, homeowners' association dues, ground rent, special assessments, water and sewer charges and other similar charges required by the note or security instrument; or

(ii) For mortgages not subject to escrow deposits, $\frac{1}{12}$ of the estimated annual costs for items listed in paragraph (2)(i) of this definition.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

Subpart B—Eligibility Requirements and Underwriting Procedures

§ 4001.102 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart A, concerning eligibility requirements of mortgages covering one-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on one-family dwellings to be insured under section 257 of the National Housing Act (12 U.S.C. 1701z–22), except the following provisions: 203.7 Commitment Process; 203.10 Informed consumer choice for prospective FHA mortgagors; 203.12 Mortgage insurance on proposed or new subdivisions; 203.14 Builder's warranty; 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes; 203.17(d) Maturity; 203.18 Maximum mortgage amounts; 203.18a Solar-energy system; 203.18b Increased mortgage amount; 203.18c One-time or up-front MIP excluded from limitations on maximum mortgage amounts; 203.18d Minimum principal loan amount; 203.19 Mortgagor's minimum investment; 203.20 Agreed interest rate; 203.29 Eligible mortgage in Alaska, Guam, Hawaii or the Virgin Islands; 203.32 Mortgage lien; 203.37a Sale of property; 203.42 Rental properties; 203.43 Eligibility of miscellaneous types of mortgages; 203.43a Eligibility of mortgages covering housing in certain neighborhoods; 203.43d Eligibility of mortgages in certain communities; 203.43e Eligibility of mortgages covering houses in

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federally impacted areas; 203.43g Eligibility of mortgages in certain communities; 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act; 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation Indians; 203.44 Eligibility of advances; 203.45 Eligibility of graduated payment mortgages; 203.47 Eligibility of growing equity mortgages; 203.49 Eligibility of adjustable rate mortgages; 203.50 Eligibility of rehabilitation loans; 203.51 Applicability; and 203.200-203.209 Insured Ten-Year Protection Plans (Plan).

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart A, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart A, to the “Mutual Mortgage Insurance Fund” shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to “the Commissioner” shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart A, to this part the provisions of this part shall control.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

§4001.104 Eligible mortgages.

A mortgage eligible to be refinanced under section 257 of the Act must:

(a) Have been originated on or before January 1, 2008;

(b) Be secured by a property owned and occupied by the mortgagor as his or her primary residence, and be the only residence in which the mortgagor has any present ownership interest; and

(c) Meet such other requirements as the Board may adopt.

§4001.106 Eligible mortgagors.

A mortgagor shall be eligible to refinance his or her existing mortgages under section 257 of the Act only if:

(a)(1) The mortgagor had, on March 1, 2008, a total monthly mortgage payment (based on mortgages outstanding on March 1, 2008) of more than 31 per-

cent of the mortgagor’s monthly gross income; or

(2) If the mortgagor’s existing senior mortgage or existing subordinate mortgage, if any, is an adjustable-rate mortgage that by its terms resets after March 1, 2008, the mortgagor has a total monthly mortgage payment (based on mortgages outstanding on March 1, 2008) of more than 31 percent of the mortgagor’s monthly gross income calculated as of the date the mortgagor first applies for the Program mortgage;

(b) The mortgagor does not have an ownership interest in any other residential property;

(c) The mortgagor has not been convicted of fraud under federal or state law in the past 10 years;

(d) The mortgagor certifies that the mortgagor has not intentionally defaulted on any mortgage or debt and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for purposes of obtaining any Program mortgage; and

(e) The mortgagor meets such other requirements as the Board may adopt.

[74 FR 621, Jan. 7, 2009]

§4001.108 Eligible properties.

(a) A mortgage may be insured under the Program only if the property that is to be the security for the mortgage is a 1-to-4 unit residence.

(b) The following property types are eligible to secure a mortgage insured under the Program:

(1) Detached and semi-detached dwellings;

(2) A condominium unit;

(3) A cooperative unit; or

(4) A manufactured home that is permanently affixed to realty and is treated as realty under applicable state law except state taxation law.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

§4001.110 Underwriting.

A mortgage may be insured under the Program only if the following conditions are met:

(a) *Loan-to-value and income thresholds.* The loan-to-value (LTV), payment-to-income, and debt-to-income

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ratios of the Program mortgage do not exceed the thresholds set forth in either paragraph (a)(1) or (a)(2) of this section.

(1) *Program mortgage with LTV ratio of 90 percent or less.* (i) The initial principal balance of the Program mortgage as a percentage of the current appraised value of the property does not exceed 90 percent;

(ii) The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 38 percent of the mortgagor's monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 50 percent of the mortgagor's monthly gross income.

(2) *Program mortgage with up to 96.5 percent LTV.* (i) The initial principal balance of the Program mortgage as a percentage of the current appraised value of the property does not exceed 96.5 percent;

(ii) The total monthly mortgage payment of the mortgagor under the Program mortgage does not exceed 31 percent of the mortgagor's monthly gross income; and

(iii) The sum of the total monthly mortgage payment under the Program mortgage and all monthly recurring expenses of the mortgagor does not exceed 43 percent of the mortgagor's monthly gross income.

(b) *Past credit performance.* The mortgagor must have made at least six full payments on the existing senior mortgage being refinanced under the Program.

(c) The Program mortgage shall have a maturity of not less than 30 years and not more than 40 years from the date of origination.

(d) *Non-occupant co-borrowers.* A mortgage loan may be insured by the FHA under the Program, even if one of the mortgagors on the loan (*i.e.*, a co-signer) does not reside at the residence securing the loan, provided that the non-resident mortgagor relinquishes all interests in the property that is to be security for the mortgage before an application is submitted for FHA insurance under the Program.

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(e) *Amount of new mortgage payment.* The mortgagor's total monthly payment on the mortgage to be insured under the Program must not be greater than the mortgagor's aggregate total monthly mortgage payment under the mortgagor's existing senior mortgage and all existing subordinate mortgages.

(f) *Limit on origination fees.* Mortgagees may charge and collect from mortgagors allowable closing costs.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

§ 4001.112 Income verification.

The mortgagee shall use FHA's procedures to verify the mortgagor's income and shall comply with the following additional requirements:

(a) The mortgagee shall document and verify the income of the mortgagor by obtaining a transcript of the borrower's Federal income tax returns or a copy of the borrower's Federal income tax returns obtained directly from the Internal Revenue Service for the most recent two years; and

(b) The mortgagee shall document and verify the mortgagor's income in any case in which the mortgagor has not filed a Federal income tax return.

§ 4001.114 Appraisal.

(a) The property shall be appraised by an appraiser on the FHA Appraiser Roster.

(b) An appraisal of a property to be security for a Program mortgage shall be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) but dated no more than 90 days from the date on which the mortgage transaction is closed, except as otherwise provided by the Board.

(c) The mortgagee must inform the appraiser that copies of the appraisal may be shared with holders and servicers of existing subordinate mortgages.

§ 4001.116 Representations and prohibitions.

(a) *Underwriting and appraisal standards.* In order for the Program mortgage to be eligible for insurance under the Program, the underwriter and the mortgagee must provide certifications, in a format approved by the FHA, that

the mortgage is in compliance with the underwriting and the appraisal standards set forth in this part, and that it meets all requirements applicable to the Program. FHA may require additional certifications by the mortgagee to ensure compliance with such additional standards as the FHA deems necessary given the specific mortgage transaction presented.

(b) *Mortgagor's liability for repayment.*

(1) The mortgagor shall provide a certification to FHA that the mortgagor has not:

(i) Intentionally defaulted on the mortgagor's existing mortgage(s), or any other debt; or

(ii) Knowingly or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining the mortgagor's existing mortgage(s).

(2) The mortgagor shall provide any other certifications that FHA may otherwise require.

(3) A mortgagor obligated under a Program mortgage shall agree in writing, on a form approved by the Board, to be liable to pay to FHA any Direct Financial Benefit achieved from the reduction of indebtedness on the existing senior and subordinate mortgages that are being refinanced under the Program if he or she makes a false statement or other misrepresentation in the certifications and documentation required for Program eligibility, including but not limited to the certifications required under section 257(e)(1)(A)(i) of the Act.

(c) *Mortgagee in violation of Program requirements.* (1) If the mortgagee holds a Program mortgage that it originated and/or underwrote, and FHA finds that the mortgagee violated the Program requirements, FHA is prohibited from paying FHA insurance benefits to that mortgagee.

(2) If the mortgagee no longer holds the Program mortgage that it originated and/or underwrote, FHA will pay the insurance claim to the mortgagee presently holding the Program mortgage (if all other requirements of the contract for mortgage insurance are met and the present holder did not participate in the violation of Program requirements) and shall seek indem-

nification from the non-holding mortgagee.

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within such time period as the Board prescribes. The binder shall include evidence acceptable to the Board that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within 120 days from the date of closing of the mortgage. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage payment on behalf of the mortgagor. The mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

§4001.118 Equity sharing.

(a) *Initial Equity.* For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of a Program mortgage on a property, as calculated by the Program mortgage lender, shall equal:

(1) The lesser of—

(i) The appraised value of the property that was used at the time of origination of the Program mortgage to underwrite the mortgage and to determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act; or

(ii) The outstanding amount due under all existing senior mortgages, existing subordinate mortgages, and non-mortgage liens on the property; less

(2) The original principal amount of the Program mortgage on the property.

(b) *FHA's interest.* Upon the sale or disposition of a property or Program mortgage refinancing, FHA shall calculate and be entitled to receive the portion of the initial equity (as defined by paragraph (a) of this section) set forth in section 257(k)(1) of the Act,

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subject to such standards and policies as the Board may establish.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 622, Jan. 7, 2009]

§ 4001.120 Appreciation sharing or upfront payment.

(a) *Calculation of appreciation.* For purposes of section 257(k)(2) of the Act, the amount of the appreciation in value of a property securing a Program mortgage that occurs between the date the mortgage was insured under section 257 of the Act and the date of any subsequent sale or disposition of the property shall be equal to the following, as such amounts of appreciation may be established to the satisfaction of FHA:

(1) In the case of—

(i) A sale of the property to one or more persons none of which is a related party of the mortgagor, the gross proceeds from the sale of the property; or

(ii) A disposition of the property or the sale of the property to a related party of the mortgagor, the current appraised value of the property at the time of the disposition or sale; less

(2) The amount of closing costs, as adopted by the Board, incurred by the mortgagor(s) in connection with such sale or disposition, if any; less

(3) Seventy-five percent, as may be modified by the Board, of the actual expenditures for Capital Improvements made by the mortgagor(s) after the date of origination of the Program mortgage; and less

(4) The appraised value of the property that was used at the time of origination of the Program mortgage to underwrite that mortgage and determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act.

(b) *HUD's interest in appreciation.* Upon sale or disposition of a property securing a Program mortgage, FHA shall be entitled to receive an amount equal to 50 percent of the appreciation in value of the property calculated in accordance with paragraph (a) of this section.

(c) *Eligibility of subordinate mortgage holders to receive a portion of appreciation in value.* The persons or entities that hold, on the date of origination of a Program mortgage, an existing sub-

ordinate mortgage on the property shall be eligible to receive a portion of FHA's interest in the appreciation in value of the property, as determined in accordance with the provisions of this section and such additional standards and policies that the Board may establish, if:

(1) The existing subordinate mortgage was originated on or before January 1, 2008;

(2) The amount of the unpaid principal and interest on such existing subordinate mortgage, as of the first day of the month in which the mortgagor made application for the Program mortgage, is at least \$2,500; and

(3) Each person holding such existing subordinate mortgage agrees, in connection with the origination of the Program mortgage, to fully release:

(i) The mortgagor(s) from any indebtedness under the existing subordinate mortgage; and

(ii) The holder's mortgage lien on the property.

(d) *Shared appreciation interest of subordinate mortgage holders.*

(1) *In general.* The eligible holder(s) of an existing subordinate mortgage on a property securing a Program mortgage shall be eligible to receive, subject to paragraph (c)(3) of this section, an interest in FHA's interest in the appreciation in the value of such property up to the amount set forth in the Appendix to this part.

(2) *Form.* The interest of an eligible holder of an existing subordinate mortgage under paragraph (d) of this section is evidenced in a shared appreciation certificate or other documentation to be issued by, or on behalf of, HUD.

(3) *Multiple subordinate liens.* If there is more than one eligible existing subordinate mortgage on a property securing a Program mortgage, the interests of such eligible existing subordinate mortgages under paragraph (d)(1) of this section shall have priority among each other in the same order of priority that existed among the existing subordinate mortgages on the date of origination of the Program mortgage.

(4) *Distribution of appreciation interest to subordinate mortgage holders.* Upon the sale or disposition of a property securing a Program mortgage other than

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sale or disposition related to a default, any proceeds due to FHA as a result of the appreciation in value of the property (as calculated in accordance with paragraph (a) of this section) shall be distributed:

(i) First to the holders of any shared appreciation certificate or other documentation issued by HUD with respect to the property, if any, in accordance with paragraphs (d)(1), (d)(2), and (d)(3) of this section; and

(ii) The remaining amounts, if any, will be retained by FHA.

(e) *Election to receive upfront payment in lieu of a share of appreciation.* Upon meeting the requirements of paragraph (c) of this section, the eligible holder(s) of an existing subordinate mortgage on a property securing a Program mortgage may elect to receive, contemporaneously with the origination of the Program mortgage, a payment from FHA in an aggregate amount determined in accordance with the formula provided in Appendix A to this part in lieu of any right to receive a portion of FHA's 50 percent interest in the future appreciation in the appraised value of such property under paragraph (c) of this section.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 622, Jan. 7, 2009]

§ 4001.122 Fees and closing costs.

(a) The holder or servicer of the existing senior and subordinate mortgages shall either forgive or waive all prepayment penalties and delinquency and default fees.

(b) Allowable closing costs incurred in connection with the refinancing and insurance of a mortgage under the Program can be paid from the following sources:

(1) The mortgagor's assets;

(2) The mortgagee holding or servicing the existing senior and subordinate mortgage or the mortgagee originating the Program mortgage;

(3) Premium pricing by the mortgagee providing the Program mortgage;

(4) Financed as part of the Program mortgage provided that the mortgage amount is adjusted accordingly, and the loan-to-value ratio does not exceed 90 percent (including the up-front premium required under § 4001.203(a)(1));

(5) A Federal, state, county or parish, or municipal program; or

(6) Such other sources as the Board may permit.

Subpart C—Rights and Obligations Under the Contract of Insurance

§ 4001.201 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart B, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except the following sections*: 203.256 Insurance of open-end advances; 203.259a Scope; 203.260 Amount of insurance premium; 203.261 Calculation of periodic MIP (periodic MIP); 203.270 Open-end insurance charges; 203.280 One-time of Up-front MIP; 203.281 Calculation of one-time MIP; 203.283 Refund of one-time MIP; 203.284 Calculation of up-front and annual MIP on or after July 1, 1991; 203.285 Fifteen year mortgages: calculation of up-front and annual MIP on or after December 26, 1992; 203.415–203.417 Certificate of Claim; 203.420–203.427 Mutual Mortgage Insurance Fund and Distributive Shares; 203.436 Claim procedures—graduated payment mortgages; 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act; 203.439a Mortgages on property in Allegheny Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act; and 203.440–203.495 Rehabilitation Loans.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart B, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart B, to the “Mutual Mortgage Insurance Fund” shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to “the Commissioner” shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart B, to this part 4001, the provisions of part 4001 shall control.

§ 4001.203 Calculation of upfront and annual mortgage insurance premiums for Program mortgages.

(a) *Applicable premiums.* Any mortgage presented for endorsement under section 257 on or after October 1, 2008, and prior to September 30, 2011, shall be subject to the following requirements:

(1) *Upfront premium.* FHA shall establish and collect a single premium payment equal to 3 percent of the amount of the original insured principal obligation of the Program mortgage.

(2) *Annual premium.* In addition to the premium under paragraph (a)(1) of this section, FHA shall establish and collect an annual premium payment in an amount equal to 1.5 percent of the amount of the remaining insured principal balance of the Program mortgage.

(b) *Proceeds for payment of the upfront premium.* The up-front premium shall be paid with proceeds from the Program mortgage through a reduction of the amount of indebtedness that existed on the eligible mortgage prior to its being refinanced.

Subpart D—Servicing Responsibilities

§ 4001.301 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart C, covering mortgages insured under section 203 of the Act shall apply to mortgages insured under section 257 of the Act, *except as follows*: 203.664 Processing defaulted mortgages on property located on Indian land; 203.665 Processing defaulted mortgages on property located on Hawaiian home lands; 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians; and 203–670–203.681 Occupied Conveyance.

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart C, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart C, to the “Mutual Mortgage Insurance Fund” shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to “the Commissioner” shall be

deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart C, to this part 4001, the provisions of part 4001 shall control.

§ 4001.303 Prohibition on subordinate liens during first five years.

(a) *Prohibition on subordinate liens during first five years.* Except as provided in paragraph (b) of this section, a mortgagor shall not, during the first 5 years of the term of the mortgagor’s Program mortgage, incur any debt, take any action, or fail to take any action that would have the direct result of causing a lien to be placed on the property securing the Program mortgage if such lien would be subordinate to the Program mortgage.

(b) *Property preservation exception.* Paragraph (a) of this section shall not prevent a mortgagor on the Program mortgage from incurring new mortgage debt secured by a lien on the property securing the Program mortgage that is subordinate to the Program mortgage if:

(1) The proceeds of the new mortgage debt are necessary to ensure the maintenance of property standards, including health and safety standards;

(2) Repair or remediation of the condition would preserve or increase the property’s value;

(3) The cost of the proposed repair or remediation is reasonable for the geographic market area;

(4) The results of the repair or remediation are not primarily cosmetic;

(5) The repair or remediation does not represent routine maintenance;

(6) The new mortgage debt is closed-end credit, as defined in § 226.2 of the Federal Reserve Board’s Regulation Z (12 CFR 226.2); and

(7) The sum of the unpaid principal balance and accrued and unpaid interest on the Program mortgage and the original principal balance of the new mortgage debt:

(i) Does not exceed 95 percent of the estimated appraised value of the property securing the Program mortgage after completion of the proposed repair or remediation; and

(ii) Is less than:

(A) The estimated appraised value of the property securing the Program mortgage after completion of the proposed repair or remediation; less

(B) FHA's proportionate share of the initial equity created upon origination of the Program mortgage as determined pursuant to the schedule set forth in section 257(k)(1) of the Act as if a sale of the property had occurred on the date of origination of the new mortgage debt.

Subpart E—Enforcement

MORTGAGOR FALSE INFORMATION

§ 4001.401 Notice of false information from mortgagor-procedure.

(a) If FHA finds that the mortgagor has made a false certification or provided false information via any means, including but not limited to false documentation, FHA shall inform the mortgagor, in writing or any other acceptable format, of such fact.

(b) The notice shall be sent to the mortgagor's last known address by both certified and ordinary mail. The notice shall state with specificity the misrepresentation or false statement made by the mortgagor. The notice shall include a request for repayment of the Direct Financial Benefit that the mortgagor is deemed to have received, as determined by FHA, by the refinancing of the eligible mortgage and subordinate mortgages. This does not preclude HUD or the United States from bringing any other action that they may be authorized to bring.

(c) The mortgagor may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

APPRAISER INDEPENDENCE

§ 4001.403 Prohibitions on interested parties in insured mortgage transaction.

(a) A mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company or employee thereof, and any person with an interest in a real estate

transaction involving an appraisal conducted as part of the process for insuring a mortgage under section 257 of the Act shall not improperly influence or attempt to improperly influence through any means, including but not limited to coercion, extortion, collusion, compensation, instruction, inducement, intimidation, nonpayment for services rendered, or bribery, the development, reporting, result or review of a real estate appraisal sought in connection with the origination, processing and closing of the mortgage for insurance.

(b) HUD may, pursuant to its authority under section 536(a) of the Act, bring an action to impose a civil money penalty for a violation of paragraph (a) of this section.

(c) The authority to bring a civil money penalty under this section shall not preclude HUD from bringing any other action that HUD may be authorized to bring for a violation of paragraph (a) of this section.

MORTGAGEES

§ 4001.405 Mortgagees.

(a) FHA is authorized by the Board to engage in monitoring activities to ensure mortgagee compliance with the requirements of this Program. The Mortgagee Review Board at HUD is authorized by the Board to impose sanctions and civil money penalties against mortgagees that violate program requirements under this part. The authority of the Mortgagee Review Board to impose sanctions and civil penalties shall not preclude HUD from bringing any other action that HUD may be authorized to bring.

(b) Nonpayment of mortgage insurance claims for reasons established in § 4001.16 shall not preclude the Mortgagee Review Board or HUD from bringing any action against the mortgagee that the Mortgagee Review Board or HUD are authorized to bring.

(c) The mortgagee may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, subpart A, except as modified by this section. Requests for a hearing must be made within 45 days from the date of the false information notice.

APPENDIX A TO PART 4001—CALCULATION OF UPFRONT PAYMENT OR FUTURE
APPRECIATION PAYMENT

Subordinate mortgage lien holder's cumulative combined loan-to-value ratio	Upfront payment option Percent of unpaid principal and interest that lien holder is eligible to receive # (percent)	Future appreciation option* Percent of unpaid principal and interest that lien holder is eligible to receive # (percent)
>135%	3	9
≤135%	4	12

* A payment to a subordinate mortgage lien holder will depend on actual appreciation of the property as determined in accordance with 24 CFR 4001.120. Payment will be made according to the subordinate lien holder's position of priority in relation to the property at the time the Program mortgage is originated.

Payment will be based upon principal and interest as of the first day of the month in which the borrower made application for the Program mortgage, calculated at the pre-default contract rate of interest.

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